

Service Date: January 9, 1995

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF NORTHWESTERN)	UTILITY DIVISION
TELEPHONE SYSTEMS, INC., dba)	
PTI COMMUNICATIONS, Application)	DOCKET NO. N-94-108
for Protective Order.)	
)	ORDER NO. 5823

PROTECTIVE ORDER

On November 17, 1994, Northwestern Telephone Systems, Inc., dba PTI Communications (PTI), filed before the Montana Public Service Commission (PSC or Commission) an Application for Protective Order that will govern trade secret information to be filed by PTI in conjunction with various tariff filings, other non-docket filings, and filings in response to informal information requests before the PSC. PTI's request is "generic," in the sense that it is not specific to any formal docket.

Some information submitted by PTI in conjunction with the identified filings and like filings can be reasonably viewed as trade secret, protectible pursuant to Section 69-3-105, MCA. For the identified types of filings, granting PTI's request for a "generic" order is likely to be more efficient than entertaining a request each time trade secrets become a concern.

Therefore, the PSC grants PTI's request. By doing so the PSC is not deciding or expressing any opinion as to whether the information that might be claimed to be confidential actually is.

A procedure to challenge a claim by PTI will be provided for.

The following provisions (Protective Order) shall be in effect with respect to information claimed to be trade secret by PTI when submitted in conjunction with various and miscellaneous tariff filings, other nondocket filings, filings in response to informal information requests by the PSC, and like informal filings made before the PSC.

1. Proprietary Information All information, documents, studies, and other materials claimed to be of trade secret, privileged, or confidential nature and submitted by PTI in conjunction with various and miscellaneous tariff filings, other nondocket filings, filings in response to informal information requests, and like informal filings before the PSC, shall be furnished only pursuant to the terms of this Order and shall be treated by all persons accorded access thereto pursuant to this Order as constituting private, confidential, privileged commercial and financial information, or trade secret ("Proprietary Information") and shall neither be used nor disclosed except in accordance with this Order. All material claimed by PTI to be Proprietary Information must be clearly marked with an appropri-

ate designation and submitted on yellow paper for ease of identification.

2. Terms of Disclosure to PSC and MCC Proprietary Information made available pursuant to this Order shall be given solely to counsel for the PSC and the Montana Consumer Counsel (MCC) or such others within the PSC or MCC as may be properly designated as recipients under the terms of this Order and shall not be used or disclosed except for: (a) the internal purposes of the PSC or MCC; (b) for purposes of a proceeding before the PSC; or (c) as otherwise permitted by subsequent order of the PSC. Any member of the PSC, PSC staff, the MCC, and MCC staff may have access to any Proprietary Information made available pursuant to this Order and shall be bound by the terms of this Order. Access to Proprietary Information may be authorized by counsel for the PSC or MCC (or counsel for such other party as may properly acquire access to said information pursuant to the terms of this Order), solely for the above-described purposes, to other persons identified as being their expert consultants.

3. Disclosure to Others -- Petition Any member of the public or party with proper standing may specially petition the PSC for access to Proprietary Information furnished pursuant to the terms of this Order. A petition must fully identify the

petitioner, state the basis, need, and interest of the petitioner, and must demonstrate that the interest directly relates to the ratemaking, investigatory, or other regulatory function of the PSC. The petitioner shall give notice of any such petition to PTI, who shall have a period of 14 days to file an objection or response prior to the PSC's ruling. If the petition is granted by the PSC, the petitioner shall be accorded access to the Proprietary Information pursuant to the terms of this Order and shall be bound by its terms. Prior to disclosure, counsel for the petitioner shall submit a fully executed nondisclosure agreement (Exhibit "A") in the form attached to this Order. For any petitioner, any person to be designated as an expert consultant may not be an officer, director, or employee (except legal counsel) of a party to the proceeding, or an officer, director, employee, or stockholder, or member of an association or corporation of which any such party is a member, subsidiary, or affiliate.

4. Nondisclosure Agreement Prior to giving qualified persons access to Proprietary Information, counsel or staff for the PSC and MCC and counsel for any person or party seeking the Proprietary Information shall deliver a copy of this Order to such qualified person who shall agree in writing to comply with

and be bound by this Order. Proprietary Information shall not be disclosed to any person who has not signed a nondisclosure agreement (Exhibit "A") in the form attached to this Order. The nondisclosure agreement shall require the person to whom disclosure is to be made to read a copy of this Order and certify in writing that he or she has read the same and consents to be bound by its terms. The agreement shall contain the signatory's full name, permanent address, employer, and the name of the interested person or party with whom the signatory is associated. Such agreement shall be delivered to counsel for PTI and to the PSC.

5. Delivery of Documentation Where feasible, Proprietary Information will be marked as such and delivered directly to appropriate counsel. In the alternative, Proprietary Information may be made available for inspection and review by appropriate counsel, staff, and experts at a time and place mutually agreed on by PTI and the parties and qualified interested persons, unless otherwise directed by the PSC.

6. Challenge to Confidentiality This order establishes a procedure for the expeditious handling of information that PTI claims is confidential. It is not an agreement or ruling on the confidential nature of any such information. Any party or inter-

ested person with proper standing, the MCC, or the PSC on its own motion, may challenge PTI's claim of confidentiality at any time.

Any such challenge, by petition or motion, must be served upon PTI and parties, who may then file a response or objection within 14 days thereafter. The response may also request a hearing or oral argument before the PSC, but must include grounds for such request.

(a) In the event that the parties are unable to agree that certain documents, data, information, studies, or other matters constitute Proprietary Information, the one objecting to the proprietary claim shall forthwith submit the matter to the Commission for its review. When the Commission decides the question of whether any documents, data, information, studies or other matters are Proprietary Information, the Commission will enter an order resolving the issue.

(b) Any party or qualified interested person (as described above) may seek through appropriate pleading to have documents that have been designated as Proprietary Information in accordance with this Order removed from the protective requirements of this Order and placed in the public record. If the confidential nature of this information is so challenged, resolution of the issue shall be made by a hearing examiner or the Commission after

consideration of briefs or proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized have access to such Proprietary Information shall be present. The record of any such in camera hearing shall be marked "CONFIDENTIAL--SUBJECT TO A PROTECTIVE ORDER IN DOCKET NO. N-94-108." It shall be transcribed only upon agreement of all participating parties, or by order of the hearing examiner or the Commission and, in that event, it shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this order, unless and until released from the restrictions of this Order through agreement of the parties or pursuant to an order of the hearing examiner or the Commission. Any court reporter or person recording or transcribing the proceedings shall also be required to sign an Exhibit "A." In the event that the hearing examiner or the Commission should rule in response to such a pleading that any information should be removed from the protective requirements of this Order, the parties shall not disclose such information or use it in the public record for a period of seven business days thereafter, so that PTI shall be afforded a reasonable opportunity to seek a stay or other appropriate relief in court.

7. Seal While in the custody of the PSC or MCC or any agency subject to public right to know provisions, materials subject to this Order shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. N-94-108" and, due to their private nature, shall not be considered as records in the possession or retained within the meaning of any open meeting or access to public record statutes.

8. Use in Pleadings, Briefs, and Other Documents Where reference to Proprietary Information is required in pleadings, briefs, argument or motions, it shall be by citation to title or other nonconfidential description. Any further use or substantive reference to Proprietary Information shall be placed in a separate section of the pleading or brief and submitted to the Commission under seal. This sealed section shall be served only upon counsel (one copy each) who have signed an Exhibit "A." All the protections afforded in this Order apply to materials prepared and distributed pursuant to this paragraph.

9. Use in Commission Orders A hearing examiner or the Commission will attempt to refer to Proprietary Information in only a general or summary form, and to the greatest extent possible, will avoid reproduction of Proprietary Information in any decision or ruling. If it is necessary to discuss Propri-

etary Information in greater detail, it shall be placed in a separate section of an order, under seal. This sealed section shall be served only on counsel (one copy each) who have signed an Exhibit "A." Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission after signing an Exhibit "A."

10. Summary for Record If deemed necessary by the Commission, the providing parties shall prepare a written summary of the Proprietary Information referred to in a decision or order, for placement on the public record.

11. Segregation of Files All Proprietary Information filed with the Commission shall be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order, unless such Proprietary Information is released from the restrictions of this Order either through agreement of the parties, an order of the Commission, or an order of a Court having competent jurisdiction.

All written Proprietary Information coming into the possession of the MCC under this order may be retained in the MCC office files, but shall be withheld from inspection by others, except for qualified MCC staff, unless released by agreement, an order of the Commission, or an order of a court.

12. Preservation of Confidentiality All persons who may be entitled to receive, or who are afforded access to any Proprietary Information by reason of this Order shall neither use nor disclose the Proprietary Information for purposes of business or competition, or any purpose other than those contemplated by this Order, and shall take reasonable precautions to keep the Proprietary Information secure and in accordance with the purposes and intent of this Order.

13. Return Unless otherwise ordered, Proprietary Information to which a claim of confidentiality is made, and which is either subject to the protective requirements of this Order or is finally determined to be confidential or trade secret, shall be returned by all parties to counsel for the PTI within 30 days after final settlement or conclusion of the proceeding, including judicial review thereof. The foregoing sentence does not apply to the Commission or MCC or their expert consultants. Following completion of this proceeding, PTI may request that Proprietary Information be returned by MCC and its expert consultants. Following the provision of microfiche copies to the PSC by PTI, as provided in applicable orders of the PSC, PTI may request that the hard copy be returned by the PSC. Copies of all proprietary information which is made part of the record in this proceeding

must remain in the possession of the PSC in some form, either hard copy, microfiche or other medium approved by the PSC. The MCC may refuse to return proprietary information which is made part of a PSC record and may retain said information in the form necessary or appropriate by the MCC (subject to the terms of this Order).

14. Reservation of Rights The persons hereto affected by the terms of this Protective Order retain the right to question, challenge, and object to the admissibility (in any proceeding before the PSC or other appropriate body) of any information furnished under the terms of this Protective Order, on the grounds of relevancy or materiality. This Order shall in no way constitute any waiver of the rights of any interested party to contest any assertion or finding on the right of privacy, confidentiality or privilege, and to appeal any such determination of the Commission.

15. Scope This Order shall only apply to information filed with the PSC in conjunction with miscellaneous tariff filings, other nondocket filings, filings in response to informal information requests, and like filings, provided that such filings must include a specific request for proprietary treatment. This Order shall be effective for a period of four years from the date

hereof unless the PSC otherwise orders. A new request may be submitted at the end of the four years, if PTI intends to seek an extension of the terms of this Order.

16. Amendment or Modification The Commission retains jurisdiction of this matter and may alter or amend the provisions of this Order as it deems appropriate, upon its own motion or the motion of a party or interested person, after reasonable notice.

Done and dated this 8th day of December, 1994, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ANDERSON, Chairman

BOB ROWE, Vice Chairman

DAVE FISHER, Commissioner

NANCY MCCAFFREE, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

EXHIBIT "A"

I have reviewed the foregoing Protective Order issued in PSC
Docket No. N-94-108, dated December 8, 1994, and agree to be
bound by its terms and conditions.

Signature

Typed or Printed Name

Employer or Firm

Business Address

Party

Date